

SERVICE DATE – SEPTEMBER 1, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 388X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ATLANTA, GA.

Decided: August 31, 2017

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.0 mile of rail line between milepost DF 632.10 and milepost DF 633.10 in Atlanta, Ga. (the Line).¹ Notice of the exemption was served and published in the Federal Register on August 3, 2017 (82 Fed. Reg. 36,182). The exemption is scheduled to become effective on September 2, 2017.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on August 8, 2017, recommending that three conditions be imposed on any decision granting abandonment authority. OEA noted that the National Geodetic Survey (NGS) stated that two geodetic survey markers may be near the Line. Therefore, OEA recommended that NSR be required to consult with and notify the NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

OEA also noted that NSR served a historic report on the Georgia State Historic Preservation Officer (SHPO), pursuant to 49 C.F.R. § 1105.8(c). In a reply to the report, the SHPO (here, the Georgia Department of Natural Resources, Historic Protection Division) identified the Atlanta and Richmond Air-Line Railway as eligible for listing in the National Register of Historic Places (National Register) and found that the proposed abandonment constitutes an adverse effect to historic properties located within the project's area of potential effect (APE). Accordingly, OEA recommended that NSR be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the APE that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, has been completed. OEA also recommended that NSR be required to report back to OEA regarding any consultations with the SHPO and the public and not file its consummation notice or initiate any salvage activities related to abandonment (including

¹ NSR states that the Line includes the portion of NSR's right-of-way that the Board found not to have been abandoned in Atlanta Development Authority—Verified Petition for a Declaratory Order, FD 35991, slip op. at 9 (STB served Dec. 15, 2016), reconsideration denied, FD 35591 (STB served May 26, 2017). NSR states that it plans to convey the easement and wye right-of-way to Atlanta BeltLine, Inc. (Atlanta Beltline) for urban development and to improve the City's infrastructure upon consummation of the proposed abandonment.

removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

Finally, in the EA, OEA stated that in a response to NSR's initial environment report, the U.S. Army Corps of Engineers (Corps) had determined that the proposed abandonment would not require a Corps permit. In NSR's amended notice of exemption, NSR stated that the Corps had confirmed that a permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344) would be required after the Line termini were expanded to include the bridge crossing Clear Creek. Therefore, OEA recommended that, prior to commencement of any salvage activities, NSR be required to consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and to comply with the reasonable requirements of any permits issued by the Corps.

OEA received one comment in response to the EA by the August 23, 2017 due date. OEA issued its final EA on August 28, 2017.

In the final EA, OEA states that it received a comment from the SHPO noting that the adverse effect determination no longer appears applicable and finding that the proposed abandonment will have no adverse effect on historic properties within its APE. OEA noted that the SHPO's conclusion was based upon a review of an executed amendment to the Contract of Purchase and Sale between Atlanta Beltline and NSR, which includes an adequate and enforceable contingency to the sale that the SHPO deems acceptable to avoid its initially identified adverse effect. OEA states that the Board has satisfied its responsibilities under Section 106 of the NHPA in this proceeding and recommends that the Section 106 condition not be imposed. OEA continues to recommend that the other two conditions (consultations with NGS and the Corps) be imposed upon any decision granting abandonment authority. Accordingly, the two conditions recommended by OEA in the final EA will be imposed.

Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on August 3, 2017, exempting the abandonment of the Line described above is subject to the conditions that NSR shall:
 - (a) consult with and notify the NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; and

(b) prior to commencement of any salvage activities, consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and comply with the reasonable requirements of any permits issued by the Corps.

3. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.